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NAVINCHANDRAN GM NAIDU v. KASSIM ABD RAHMAN

HIGH COURT MALAYA, KUALA LUMPUR
QUAY CHEW SOON JC
[SUIT NO: WA-22NCVC-374-07-2020]
2 FEBRUARY 2021

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CIVIL PROCEDURE: *Striking out – Writ and statement of claim – Application to strike out affiliate club member's action – Member sought declaration that private social club's decision to declare him as persona non grata null and void – Whether plain and obvious case for striking out – Right to enter and utilise premises pursuant to reciprocal arrangement entered – Whether member privy to reciprocal arrangement – Whether 'invited member' – Whether private organisation obligated to issue show cause or confer right to be heard – Whether declaration that member as persona non grata in accordance with club's constitution – Rules of Court 2012, O. 18 r. 19(1)(b), (c) & (d)*

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The defendant was a private organisation registered under the Societies Act 1966. Pursuant to a reciprocal arrangement, members of its affiliate club was given the permission to enter and utilise the defendant's premises and its facilities ('premises') so long as they present a letter of introduction from the affiliate club ('letter of introduction'). This reciprocal arrangement was subject to the defendant's constitution ('constitution') and by-laws. The plaintiff, an affiliate club member, was subjected to two complaints for exhibiting rude and impolite behaviour towards the defendant's members and employees while he was at the premises. After the complaints were referred to the defendant's council ('council'), the council declared the plaintiff a *persona non grata*, and this was displayed on the defendant's notice board, resulting in the plaintiff to be forbidden from entering the premises ('decision'). Aggrieved, the plaintiff averred that the decision was made without the defendant issuing any show cause notice to the plaintiff or giving him any right to be heard, hence, a denial of natural justice and in violation of the plaintiff's constitutional rights. This prompted the plaintiff to file an action against the defendant, which prayed for: (i) a declaration that the decision was null and void; (ii) an order that the plaintiff's name to be removed from the list of those declared as *persona non grata* posted on the defendant's notice board; (iii) general damages of RM1 million; and (iv) aggravated damages of RM1 million ('action'). Hence, the defendant's current application under O. 18 r. 19(1)(b), (c) and (d) of the Rules of Court 2012 ('ROC'), seeking to strike out the plaintiff's writ of summons and statement of claim ('SOC') ('application'). Resisting the application, the plaintiff contended that: (i) he was the defendant's 'invited member'; (ii) his constitutional rights under arts. 5(1), 8(1) and 10(1) of the Federal Constitution ('FC') had been violated when he was declared a *persona non grata*; and (iii) the plaintiff was entitled to the general and aggravated damages claimed, among others, because: (a) he lost all rights as an affiliate club

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member to use the facilities in the premises; (b) his good reputation and position had been tarnished among fellow club members due to the posting of his name in the *persona non grata* list on the defendant's notice board; and (c) his activities in his professional capacity had been disrupted due to this matter.

Held (allowing application with costs):

(1) There was no privity of contract between the parties. Hence, there was no continuing contractual relationship between them. Although the plaintiff may have an interest in the performance of the reciprocal arrangement, the plaintiff was not a party to such arrangement. Thus, the plaintiff could not bring an action against the defendant merely by virtue of that reciprocal arrangement. The plaintiff clearly had no *locus standi* when it brought the action against the defendant. The SOC therefore could not stand. (paras 17-18, 21-22 & 24)

(2) Under r. 6(a) of the constitution, 'privileged persons' include persons categorised as 'invited member', guests and visitors. Meanwhile, according to r. 6(a)(viii) of the constitution, the defendant has the power to withdraw the privileges accorded to these 'privileged persons'. Thus, even if it was true that the plaintiff was an 'invited member', he at best would still be regarded as a 'privileged person', which, according to both above-mentioned rules, the council could always withdraw the plaintiff's privileges and thereafter declare him a *persona non grata*. (paras 28-29)

(3) A private organisation, such as the defendant, was entitled to regulate its memberships. It was not open for the plaintiff to come and assert to be an 'invited member' of the defendant. The various factual allegations that he was an 'invited member', had also been explained away by the defendant, in that: (i) the letter of introduction, that was required to be presented by the plaintiff if he wished to enter the premises, would introduce the plaintiff as a member of the affiliate club, and would also request the defendant to extend the reciprocal privileges to him. This showed that the plaintiff was not readily accepted onto the premises as an 'invited member'; (ii) the plaintiff could not remain in the premises as long as he wished. Pursuant to r. 6(h)(i) of the constitution, a guest such as the plaintiff was only allowed into the premises up to a maximum of 12 times a year; (iii) although no other member of the defendant was responsible upon the debts incurred by the plaintiff when he was at the defendant's premises, by virtue of the reciprocal arrangement, any debt incurred by the plaintiff which remained unpaid, was the responsibility of the affiliate club; and (iv) the plaintiff's right to play and access the slot machines and any other games of chance was due a temporary card provided. This temporary card was also provided

to all guests from reciprocal clubs for them to make payments since they were not accompanied by members of the defendant to shoulder the responsibility of their bills. Therefore, the ability to play the slot machines using the temporary card does not make the plaintiff an 'invited member'. (paras 30-36)

(4) There had been no breach of natural justice by the defendant when the plaintiff was not given the right to be heard because: (i) the defendant was a private organisation. It does not owe legal duties save to its own members. The plaintiff was not a member, hence, he could not raise breach of natural justice against the defendant; (ii) due to this non-membership, the defendant also had no power to call the plaintiff as a witness, to issue him show cause letter regarding the complaints or to compel him to answer the same; and (iii) the decision was made based on the powers conferred by the constitution. As such, it was not for the court to review the merits of the complaints. The jurisdiction of the courts in this regard was of a limited and supervisory in nature and its role was only to see whether the rules laid down in the constitution had been observed. Therefore, the court ought to be slow in interfering with the domestic affairs of the defendant. (paras 38, 40-43 & 44)

(5) The plaintiff should have appealed through the affiliate club as the reciprocal arrangement was between the latter and the defendant. Only the member who brought the guest (affiliate club) could appeal against the action taken by the defendant as the guest (plaintiff) does not have any *locus standi* to initiate an action against the defendant. Hence, the plaintiff had failed to exhaust the domestic appeal avenue available and instead had resorted to the court, contrary to the defendant's constitution and principles governing social clubs in general. Due to that, the plaintiff's action here was premature. (paras 45-46 & 49)

(6) No fundamental rights guaranteed by the FC were violated when the defendant unilaterally declared the plaintiff a *persona non grata* because: (i) with respect to art. 5(1) of the FC, the defendant did not deprive the plaintiff of his life, personal liberty or livelihood. The decision did not affect the plaintiff's membership with the affiliate club; (ii) in respect of art. 8(1) of the FC, the defendant did not unfairly discriminate against the plaintiff. The decision was made after deliberation of the complaints and incident reports. The powers of the defendant's council had been used fairly, reasonably and were not exercised arbitrarily. Further, art. 8(5)(a) of the FC does not prohibit any provision regulating personal law. Therefore, as a private organisation, the defendant was entitled to regulate its own affairs pertaining to its members and guest; and (iii) as regards to art. 10(1) of the FC, the defendant did not deny the plaintiff's right to freedom of speech and expression. It was noted that the doors were not completely shut as the plaintiff could have appealed through the affiliate club to reconsider his *persona non grata* status. (paras 51-54)

(7) The particulars pleaded in the plaintiff's statement of claim bordered an action for defamation which was not pleaded as a cause of action by the plaintiff. The quantification of general damages as provided by the plaintiff was also prohibited under O. 18 r. 12(1A) of the ROC. Moreover, the plaintiff's claim for RM2 million in damages seemed to be rather frivolous and vexatious in nature. These coupled with the reasons as enumerated above, the plaintiff's action against the defendant was a plain and obvious case for striking out. (paras 59-60)

Case(s) referred to:

Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd [1993] 4 CLJ 7 SC ***(refd)***

Boustead Naval Shipyard Sdn Bhd v. Dynaforce Corporation Sdn Bhd [2014] 5 CLJ 533 CA ***(refd)***

Darshan Singh v. Farid Kamal Hussain [2004] 4 CLJ 410 CA ***(refd)***

Lembaga Kumpulan Wang Simpanan Pekerja v. Kesatuan Kakitangan Lembaga Kumpulan Wang Simpanan Pekerja [2000] 3 CLJ 81 FC ***(refd)***

Raja Servai Shs Iyadorai v. Tunku Abdul Aziz Ibrahim & Ors [2005] 6 CLJ 443 HC ***(refd)***

Raja Zainal Abidin Raja Hj Tachik & Ors v British-American Life & General Insurance Bhd [1993] 3 CLJ 606 SC ***(refd)***

Tsang Yee Kwan v. Majlis Perbandaran Batu Pahat [2011] 8 CLJ 913 CA ***(refd)***

Legislation referred to:

Federal Constitution, arts. 5(1), 8(1), (5)(a), 10(1)(a)

Rules of Court 2012, O. 18 rr. 12(1A), 19(1)(b), (c), (d)

For the plaintiff - David Samuel & Yasinthra; M/s Chambers of Firdaus

For the defendant - S Sri Sujalan; M/s Fauzi Ngah & Neasa

Reported by Syamim Ariffin

JUDGMENT

Quay Chew Soon JC:

Introduction

[1] The defendant ("D") filed an application *vide* encl. 6 ("encl. 6") to strike out the plaintiff's ("P") writ of summons and statement of claim ("SOC"). Enclosure 6 was made under O. 18 r. 19(1)(b), (c) and (d) of the Rules of Court 2012 ("ROC") and under the inherent jurisdiction of the court. I allowed encl. 6. These are the grounds of my decision.

Background

[2] D is the Royal Commonwealth Society of Malaysia ("RCS"), which is a private organisation registered under the Societies Act 1966. RCS is governed by its constitution ("constitution"). All members and guests who use the facilities at the premises of RCS ("premises") are bound by and shall

comply with the constitution at all times. The council of RCS ("council"), established under the constitution, is the body responsible for the management of the affairs of RCS.

[3] P's action arises from a decision of the council which declared P as a *persona non grata* due to his unbecoming behaviour ("decision"). The decision was made at a meeting of the council held on 30 May 2019 ("council meeting") under the powers conferred to the council by the constitution.

[4] According to D, P is not a member of RCS. Instead P is a member of the Royal Ipoh Club ("affiliate club"). The affiliate club is a club affiliated with RCS under a reciprocal arrangement established in 1989 between RCS and the affiliate club ("reciprocal arrangement"). P is allowed to enter the premises and use its facilities as a guest based on his membership in the affiliate club after he presents a "letter of introduction" from the affiliate club.

[5] The reciprocal arrangement is subject to the constitution and the by-laws of RCS. All members of affiliated clubs who are permitted to enter and utilise the facilities at the premises as a guest are bound by and must abide by the constitution and the by-laws at all times.

[6] D received two complaints against P's behaviour while he was staying at the premises on 19 May 2019 and 20 May 2019 ("complaints").

[7] The first complaint was brought by an employee of RCS. This stated that P had exhibited rude and impolite behaviour towards certain employees of RCS and also disturbed the peace of certain members of RCS on 19 May 2019.

[8] The second complaint was brought by a member of RCS ("said member"). This stated that P behaved rudely towards the said member and his family by P scolding the said member without any basis on 20 May 2019. The second complaint was supported by the reports of certain employees of RCS who stated that P's conduct was unreasonable and rude ("incident reports").

[9] The complaints were referred to the council. At the council meeting, members of the council deliberated on the complaints and the incident reports and decided to declare P as a *persona non grata*. The effect of the decision is that P will not be allowed entry into the premises thereafter.

[10] Pursuant to r. 16(a) of the constitution, the council has the power to issue *persona non grata* notices to any guest who exhibits an unbecoming behaviour. In which case, that person's name must be displayed on the notice board of RCS. Rule 16(a) of the constitution reads:

Rule 16: Powers of the council

(a) The council is authorised to issue notices of *Persona Non Grata* on any person or guest for any unbecoming behaviour in the Society. The name of such person or guest shall be posted on the notice board of the Society.

[11] P complains that the decision was made without D issuing any show cause notice to P or giving him a right to be heard. P's claim is premised on two causes of action, ie, (i) denial of natural justice; and (ii) violation of constitutional rights.

[12] The SOC prayed for the following reliefs:

(i) a declaration that the decision made by the council at the council meeting on 30 May 2019, which declared P as a *persona non grata* on the premises of RCS, is null and void;

(ii) an order that D removes P's name from the list of those declared as *persona non grata* posted at the notice board of RCS;

(iii) general damages of RM1 million; and

(iv) aggravated damages of RM1 million.

Decision

[13] The law pertaining to striking out of a party's pleading under O. 18 r. 19 of the ROC is well-settled. It is only in plain and obvious cases that recourse should be had to the summary process under this rule. This summary procedure can only be adopted when it can be clearly seen that a claim is on the face of it obviously unsustainable. It cannot be exercised by a minute examination of the documents and facts of the case, in order to see whether the party has a cause of action. (See the Supreme Court case of *Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd* [1993] 4 CLJ 7; [1993] 3 MLJ 36).

[14] The court must be satisfied that there is no reasonable cause of action or that the claims are frivolous or vexatious. The court is not concerned at this stage with the merits of the claim. So long as the pleadings disclose some cause of action or raise some questions fit to be decided by the judge, the mere fact that the case is weak and not likely to succeed at the trial is no ground for the pleadings to be struck out.

[15] In *Raja Zainal Abidin Raja Hj Tachik & Ors v. British-American Life & General Insurance Bhd* [1993] 3 CLJ 606 at p. 612, the Supreme Court remarked that the lower court should have scrutinised the evidence in order to decide whether the action was bound to fail. The court held that an action can be summarily disposed if there is an absence of conflict of material evidence or of conflict of affidavits on material points. So that seemingly triable or difficult issues could be readily decided in such a way as to lead to the conclusion that the action was bound to fail.

[16] Bearing in mind these legal principles, I am of the view that the SOC does not disclose a reasonable cause of action. I find the instant suit to be frivolous or vexatious. In my opinion, P's claim is obviously unsustainable and is bound to fail if it was to proceed to trial. My reasons are as follows.

Reciprocal Arrangement Is Between RCS And The Affiliate Club

[17] P avers that RCS had neglected or failed to issue any show cause notice with regards to the complaints. That RCS declared P a *persona non grata* without giving him an opportunity to defend himself. However, it must be pointed out that P is not a member of RCS. There is no continuing contractual relationship between P and RCS.

[18] P is a member of the affiliate club instead. P was allowed to use the facilities at the premises only by virtue of the reciprocal arrangement. But the reciprocal arrangement is between RCS and the affiliate club. P's access to the premises is based on his membership in the affiliate club. There is therefore no privity of contract between P and D.

[19] Under the doctrine of privity, only parties to a contract may sue and be sued under the contract. In *Tsang Yee Kwan v. Majlis Perbandaran Batu Pahat* [2011] 8 CLJ 913 at p. 922, the Court of Appeal said:

> [27] ... It is trite law that **only the parties to a contract incur rights and obligations under the contract**. This is known as the privity rule. The second defendant as a third party to the SPA is not a party to the contract and has not provided consideration for the contract but the second defendant as a **third party has an interest in the performance of the contract**. It has been a long established rule that only the parties to a contract could incur rights and obligations under it. This is described as the doctrine of privity and by this principle it simply means that **third parties could neither sue nor be sued under a contract**.
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> (emphasis added)

[20] Similarly, in *Boustead Naval Shipyard Sdn Bhd v. Dynaforce Corporation Sdn Bhd* [2014] 5 CLJ 533 at p. 561, the Court of Appeal said:

> [69] The **doctrine of privity of contract is here to stay**. In *Murphy And Others v. Bower* [1868] 2 IRCL 506, the court categorically stated that, "n**o stranger to the consideration can take advantage of a contract, although made for his benefit**". Bluntly put, **only the parties to the contract have enforceable rights and obligations under the contract**.
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> [70] As an established principle of contract law, the common law doctrine of privity of contract stands for the simple proposition that, "**no one but the parties to a contract can be bound by it or entitled under it**" ...
>
> (emphasis added)

[21] It is not in dispute that the reciprocal arrangement was entered into between RCS and the affiliate club. Admittedly, the reciprocal arrangement brings benefit to P as it allows him to use the facilities at the premises based on his membership in the affiliate club. Thus, P may have an interest in the performance of the reciprocal arrangement. But this does not detract from the fact that P is not a party to the reciprocal arrangement. P therefore cannot bring an action against RCS merely by virtue of the reciprocal arrangement that exists between RCS and the affiliate club. If at all, P's remedy lies with or through his own club, ie, the affiliate club.

Plaintiff Has No Locus Standi To Bring An Action Against RCS

[22] P has no *locus standi* to bring a claim against RCS as he is not a member of RCS and he is not privy to the reciprocal arrangement.

[23] In *Lembaga Kumpulan Wang Simpanan Pekerja v. Kesatuan Kakitangan Lembaga Kumpulan Wang Simpanan Pekerja* [2000] 3 CLJ 81 at p. 98, the Federal Court said:

> We feel that **no purpose would be served by ordering further proceedings to continue as the respondent clearly has no *locus standi*** to bring an umbrella action on behalf of all its members on their respective individual contracts with their employer, the appellant, for which different individual considerations are relevant and applicable. We are unanimously of the view that both the High Court and the Court of Appeal adopted the wrong approach to an O. 18 r. 19 application because *with the respondent having no capacity to sue in the first place, the originating summons simply cannot stand and, therefore, it falls under the category of a case which is obviously unsustainable.*
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> (emphasis added)

[24] Similarly here, P's claim is obviously unsustainable as he does not have the right to bring an action against D. No purpose would be served by ordering the present suit to proceed to trial as P clearly has no *locus standi*. The SOC cannot stand as P has no capacity to sue D in the first place.

Plaintiff Is Not An Invited Member Of RCS

[25] P argues that he is not to be classified as a guest of RCS but that he is a member of RCS instead. P asserts that he is to be categorised as an "invited member" under r. 6(c) of the constitution. I disagree.

[26] Rule 6(c) of the constitution states:

> (c) Invited Members
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> The council may ***honoris causa*** **elect** any suitable organisation, association, group, or person to be an **Invited Member** of the Society and subject to the Rules 6(a)(iii) and 6(a)(vi), an Invited Member and his family shall enjoy all amenities and facilities of the Society accorded to Resident Fellows without payment of entrance fee or subscription.
>
> (emphasis added)

[27] From a plain reading of r. 6(c) aforesaid, it is clear that an "invited member" is one who has been selected by the council as a mark of esteem. Here P was never conferred the honour of being elected to be an invited member of RCS. He is only permitted to gain access to the premises and use its facilities by virtue of the reciprocal arrangement.

[28] Even if it was true that P is an "invited member", at best P would then be categorised as a "privileged person". Under r. 6(a) of the constitution, "privileged persons" consist of *inter alia* "invited members" and guests and visitors. However, D has the power to withdraw the privileges which are accorded to "privileged persons". This is pursuant to r. 6(a)(viii) of the constitution which states:

> (viii) The council shall have the power to withdraw from any Privileged Person individually or from any class of Privileged Persons as a class, either for a definite period or indefinitely or permanently all or any of the privileges accorded to such Privileged Person or class of Privileged Persons. Such powers shall be exercisable whether or not the privilege(s) arise in the rights of a member.

[29] Taking P's case at its highest (ie, that he is an "invited member"), by virtue of r. 6(a)(viii) and r. 16(a) of the constitution, the council is still entitled to withdraw the privileges accorded to P and to declare him as a *persona non grata*.

[30] It cannot be disputed that a private organisation such as RCS has control over its members and is entitled to regulate and determine who can be its "members". It is not open to P, who is permitted entry into the premises merely as a guest by virtue of the reciprocal arrangement, to then come and assert a right to be a member of RCS.

[31] In an attempt to elevate his status from that of a "guest", P made various factual assertions in his submission, which were not raised in his affidavit. However, D has adequately explained away those assertions.

[32] Firstly, under r. 6(h)(i) of the constitution, a guest can only enter the premises if invited or introduced by a member of RCS. P contends that he need not be invited or introduced by a member of RCS in order to gain access to the premises. And that what is required of him is to possess a valid membership card of the affiliate club in order to enter the premises. According to D however, P cannot gain access to the premises merely by possessing and showing a valid membership card of the affiliate club. On the contrary, a "letter of introduction" must be presented by P.

[33] The "letter of introduction" is issued by the affiliate club and is addressed to RCS. The "letter of introduction" introduces P as a member of the affiliate club and requests RCS to extend reciprocal privileges to him. This shows that P is not readily accepted onto the premises as a member but

he is merely allowed reciprocal use of the facilities at the premises by virtue of the reciprocal arrangement. This is borne out in a letter dated 5 January 1989 exchanged between RCS and the affiliate club pertaining to the reciprocal arrangement ("letter") which states:

> This affiliation should be with reciprocal arrangements under which Royal Ipoh Club's members holding valid "**Introduction Card**" may bring in guests to the Royal Commonwealth Society and *vice versa*.
>
> (emphasis added)

[34] Secondly, P contends that he is free to enter the premises and remain there without registering his name in the visitor's book kept by RCS. According to D however, P is not free to come onto the premises and remain there as long as he wishes. Under r. 6(h)(i) of the constitution, a guest (such as P) is only allowed into the premises up to a maximum of 12 times a year.

[35] Thirdly, under r. 6(h)(ii) of the constitution, a member introducing a guest shall be liable for all debts and other liabilities incurred by the guest. P contends that no other member of RCS is responsible for the debts incurred by him while on the premises. And that he alone is responsible for his own expenses during his stay at the premises. According to D however, by virtue of the reciprocal arrangement, any debt incurred by P which remains unpaid is the responsibility of the affiliate club since P is a member of the affiliate club and the contractual nexus is between RCS and the affiliate club. Moreover, the letter states:

> However, there are no signing privileges for bills incurred and payment must be made by coupons purchased.

[36] Fourthly, under r. 6(h)(v) of the constitution, guests are not permitted to play the slot machines or any similar games of chance at the premises. P contends that he was not prohibited from playing the slot machines at the premises. According to D however, the slot machines are situated in a demarcated game area of the premises and is managed independently. During his visit, P is provided with a temporary card. This temporary card is provided to all guests from reciprocal clubs in order for them to make payments since they are not accompanied by members of RCS to take responsibility for their bills. P was permitted to gain access to the game area by showing this temporary card and thus was not prohibited from playing the slot machines. However, P's ability to play the slot machines using the temporary card does not make him a member of RCS.

Denial Of Natural Justice Is Not A Stand-alone Cause Of Action

[37] In my view, P's cause of action cannot rely solely on the alleged denial of natural justice when no duty is established in contract or tort between P and RCS. My opinion is that a duty must first be established on the part of RCS in order for P to have a right to be heard before the council or a disciplinary committee. Here P has failed to establish any such duty. Any

commercial relationship that exist between P and RCS is confined to the period during which P used the facilities at the premises as a guest. This does not grant P an indefinite right to be allowed onto the premises (which is private) and to use its facilities.

[38] RCS is a private organisation. It is not a public body and does not carry out any public duties. RCS does not owe legal duties to the public at large, save to its own members. Thus, the principle of natural justice in regards to RCS only applies to the members of RCS to whom it is contractually duty-bound. This is provided for in r. 7(c)(iv) of the constitution.

[39] Under r. 7(c) of the constitution, disciplinary action may be taken against a member of RCS for conduct which is unbecoming or is injurious to the interests of RCS or which renders such member unfit to be associated with members of RCS. The disciplinary action may be in the form of a censure, suspension or expulsion. Before any disciplinary action is taken, the affected member must be afforded a right of hearing. Rule 7(c)(iv) of the constitution states:

> (iv) The conduct of the member complained against shall be investigated and inquired into by the Panel of Inquiry and **the member shall be given full opportunity to defend himself** at the inquiry.
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> (emphasis added)

[40] Here P cannot raise breach of natural justice against D because P is not a member of RCS. D does not have any contractual obligation towards P. A private organisation like RCS cannot be held responsible to the general public.

[41] Moreover, D has no power to call P as a witness or issue him with a show cause letter regarding the complaints because P is not a member of RCS. P is merely a guest who has been allowed to enter the premises on the basis of the reciprocal arrangement. RCS has no authority over P and cannot compel P to answer the complaints.

[42] In my view, the courts ought to be slow to interfere with the domestic affairs of private or social clubs (such as RCS in this instance). The jurisdiction of the courts in this regard is of a limited and supervisory nature. I find support for this in the Court of Appeal case of *Darshan Singh v. Farid Kamal Hussain* [2004] 4 CLJ 410; [2005] 3 MLJ 502 at pp. 417 to 418 (CLJ); pp. 510 to 511 (MLJ) which said:

> The question is: To what extent is the court likely to intervene in matters involving domestic tribunal of a social club, as in the present case, as opposed to tribunals sitting in judgment over matters of a trade or profession. The stand taken by the court is succinctly stated by Denning LJ in *Lee v. Showmen's Guild of Great Britain* [1952] 1 All ER 1175 at p. 1181:

> The question in the present case is: To what extent will the courts examine the decisions of domestic tribunals on points of law? This is a new question which is not to be solved by turning to the club cases. *In the case of social clubs the rules usually empower the committee to expel a member who, in their opinion, has been guilty of conduct detrimental to the club, and this is a matter of opinion and nothing else. The courts have no wish to sit on appeal from their decisions on such a matter any more than from the decisions of a family conference. They have nothing to do with social rights or social duties*. On any expulsion they will see that there is fair play. They will see that that the man has notice of the charge and a reasonable opportunity of being heard. They will see that the committee observe the procedure laid down by the rules, but *will not otherwise interfere*: see *Labouchere v. Earl of Wharncliffe* (18), *Dawkins v. Antrobu*s (1). It is very different with domestic tribunals which sit in judgment on the members of a trade or profession. They wield powers as great, if not greater, than any exercised by the courts of law. They can deprive a man of his livelihood. They can ban him from the trade in which he has spent his life and which is the only trade he knows. They are usually empowered to do this for any breach of their rules, which, be it noted, are rules which they impose and which he has no real opportunity of accepting or rejecting. In theory their powers are based on contract. The man is supposed to have contracted to give them these great powers, but in practice he has no choice in the matter. If he is to engage in the trade he has to submit to the rules promulgated by the committee. Is such a tribunal to be treated by these courts on the same footing as a social club? I say: 'No'. A man's right to work is just as important, if not more important, to him than his rights of property. These courts intervene every day to protect rights of property. They must also intervene to protect the right to work.

The approached as propounded by Denning LJ in *Lee v. Showmen's Guild* was cited with approval by the Federal Court in *Chong Kah Lim & Ors v. Yong Su Hian* [1979] 2 MLJ 11. In this context we would also refer to the case of Singapore *Amateur Athletics Association v. Haron Mundir* [1994] 1 SLR 47. In that case Warren LH Khoo J delivering judgment of the CA said at p. 59:

> Counsel is obviously right on the law. The *jurisdiction of the courts in reviewing the decisions of domestic tribunals is clearly of a limited nature*. The decision of such a tribunal cannot be attacked on the ground that it is against the weight of evidence. The function of the courts is to see that the rules of natural justice have been observed, and that the decision has been honestly arrived at. The court has no power to review the evidence for the purpose of deciding whether the tribunal came to a right conclusion. It is *not the function of the court when exercising such supervisory jurisdiction to resolve issues of fact which are within the proper sphere of the tribunal's inquiry*.
>
> (emphasis added)

[43] The decision was made by the council upon deliberation of the complaints and the incident reports and based on the powers conferred under the constitution. It is not for me to review the merits or otherwise of the complaints and decide whether the council came to a right conclusion. My role is to see that the rules laid down in the constitution were observed. In this regard, my opinion is that the council did observe the rules set out in the constitution and acted in accordance with the powers conferred under the constitution.

[44] I am also of the opinion that there has been no breach of natural justice in this instance as P is not a member of RCS. There is no substantive nexus between RCS and P. RCS does not have any contractual obligation nor any duty in tort towards P.

Plaintiff Should Have Exhausted His Domestic Remedies Before Resorting To The Courts

[45] In my view, P should have appealed through his home club, ie, the affiliate club to RCS to reconsider his *persona non grata* status as the reciprocal arrangement is between RCS and the affiliate club. P failed to exhaust the domestic appeal avenue through this method but has resorted to the courts, contrary to the constitution and principles governing social clubs in general.

[46] P's situation is akin to that of a guest of a member of RCS. If the guest is declared a *persona non grata* due to his/her unbecoming behaviour, only the member who brought the guest can appeal against the action taken by RCS. This is because the guest does not have any *locus standi* to initiate an action against RCS.

[47] The avenue to appeal through P's home club, ie, the affiliate club against the decision of the council is of a general information that P himself ought to have known. RCS is not obligated to inform P of it. RCS ought not to be blamed for P's ignorance of the appeal avenue.

[48] In *Raja Servai Shs Iyadorai v. Tunku Abdul Aziz Ibrahim & Ors* [2005] 6 CLJ 443; [2005] 5 MLJ 160 at p. 451 (CLJ); p. 168 (MLJ), the High Court said:

> [25] Another point is this. The club is a social club. The Rules of the club provide that when a complaint is lodged against a member, the complaint must be investigated. The member will be given the right to be heard. Once the EDS hears all parties and witnesses, it will make a decision. That decision may be appealable either to GC or even to an EGM of the club. Thus, for the moment, the plaintiff has to put his case to the EDC just as any member of the club has to when a complaint is pending. Subsequently, if he is not happy with the decision of the EDC, he **has to resort to the domestic remedies available under the Rules**. In short, he **has to exhaust his domestic remedies before resorting to the courts**.
>
> (emphasis added)

[49] Even on the assumption that P has a cause of action against D, P's action here is premature as the available avenues of domestic remedies were not exhausted by P.

No Violation Of Constitutional Rights

[50] According to P, his constitutional rights under arts. 5(1), 8(1) and 10(1) of the Federal Constitution were violated premised on the following arguments:

(i) pursuant to art. 5(1), P has the right to be treated as a respectable affiliate club member. P is entitled to be treated by D without any prejudice and unfair discrimination;

(ii) pursuant to art. 8(1), P has the right to be treated fairly, equitably and equally in accordance with the law as other members of RCS; and

(iii) pursuant to art. 10(1)(a), P has the freedom of speech including the right to make a valid complaint and/or reprimand to the relevant party and D must respect P's right.

[51] P argued that his fundamental rights guaranteed by the Federal Constitution were violated when D unilaterally declared him to be a *persona non grata*. I disagree.

[52] With respect to art. 5(1) of the Federal Constitution, D did not deprive P of his life, personal liberty or livelihood. The decision of the council does not affect P's membership with the affiliate club. P remains a member of the affiliate club, so long as he abides by the rules and regulations of the affiliate club. P however is not a member of RCS. He was allowed access to the premises only by virtue of the reciprocal arrangement. Under the constitution, the council is entitled to withdraw the privileges accorded to P and to declare him as a *persona non grata*. There is no contractual nexus between RCS and P. RCS owes no legal obligation towards P.

[53] In respect of art. 8(1) of the Federal Constitution, D did not unfairly discriminate against P. The decision was made after deliberation of the complaints and the incident reports. The powers of the council were used fairly and reasonably and were not exercised arbitrarily. Furthermore, art. 8(5)(a) provides that this article does not invalidate or prohibit any provision regulating personal law. RCS is not a public authority. As a private organisation, RCS is entitled to regulate its own affairs and the way it deals with its members and guests. Indeed r. 16(b)(i) of the constitution states:

> (b) The council shall have power from time to time to make, alter and repeal all such by-laws as they deem necessary, expedient or convenient for proper conduct and management of the Society and ... may regulate:
>
> (i) The terms and conditions upon which guests, spouses and children of members and visitors may be permitted to use the premises and property of the Society;

[54] As regards art. 10(1) of the Federal Constitution, D did not deny P his right to freedom of speech and expression. The council took action against P for cause based on the complaints and the incident reports. It is noted that the doors were not completely shut as P could have appealed through his home club, ie, the affiliate club to RCS to reconsider his *persona non grata* status. P failed to exhaust the domestic appeal avenue through this method but has resorted to the courts.

Plaintiff's Claim For RM2 Million In Damages

[55] P prayed for general damages and aggravated damages in the total sum of RM2 million. The loss allegedly suffered by P are particularised in paras. 27 and 28 of the SOC.

[56] Paragraph 27 of the SOC pleads:

> (1) Plaintiff has been unfairly and unjustly deprived of his access and enjoyment of the facilities and privileges in RCS by virtue of being an affiliated Club Member.
>
> (2) Plaintiff lost all rights as an affiliated Club Member to use the facilities and accommodation facilities at RCS.
>
> (3) Plaintiff's reputation and his good standing have been tarnished among RIC [affiliate Club] and RCS club members.
>
> (4) Plaintiff's activities in his professional capacity have been disrupted and have been affected by RCS's actions and defaults.
>
> (5) The Plaintiff had to bear the legal cost and courts cost to seek expertise and legal advice in filing this action.

[57] Paragraph 28 of the SOC pleads:

> (1) The Plaintiff's position as Chief Justice for Native American Nations; International Law Partner and Advisor to Messrs CM Sundram Advocates and Company, Kuching, Sarawak; Chief Legal, Economic and Political Advisor to the *de facto* Government of Borinken (formerly Puerto Rico) in the Caribbean; CEO of the Boriken Peoples' Treasury has been tarnished.
>
> (2) The conduct and actions of the RCS leading up to the point of the Plaintiff's labelling as *Persona Non Grata* on RCS's notice board resulted with a pernicious effect on the dignity, pride and respect enjoyed by the Plaintiff as the Chief Justice for Native American Nations; International Law Partner and Advisor to Messrs CM Sundram Advocates and Company, Kuching, Sarawak; Chief Legal, Economic and Political Advisor to the *de facto* Government of Boriken (formerly Puerto Rico) in the Caribbean; CEO of the Boriken Peoples' Treasury.
>
> (3) The RCS has degraded and insulted the Plaintiff by sending a letter dated 7.6.2019 stating that the Plaintiff has been labelled a "*Non Grata Persona*" and suggested the RIC [affiliate Club] to take action against the Plaintiff.

(4) RCS unfairly discriminated the Plaintiff, acted unjustly and motivated with malice in arriving at the decision to label the Plaintiff as "*Persona Non Grata*" posted at the Notice board of RCS.

[58] In response to the above credentials, D produced a letter dated 14 September 2020 from another social club, namely the Royal Selangor Club. The said letter stated that P was expelled from that club because he was found guilty of various charges that was brought against him. The said letter further stated that P filed a suit against that club with regard to his expulsion.

[59] The particulars pleaded in the SOC to support P's claim borders an action for defamation. But defamation was not pleaded by P as a cause of action. I also observe that quantification of general damages is prohibited under O. 18 r. 12(1A) of the ROC. P's claim for RM2 million in damages seems to me to be rather frivolous and vexatious in nature.

Conclusion

[60] For the reasons above, I am satisfied that this is a plain and obvious case for striking out. I therefore allowed encl. 6. I ordered P to pay costs of RM5,000 to D.